



State of New Jersey

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April 30, 2018

Diane Salkie
U.S. Environmental Protection Agency (USEPA)
Region II Headquarters
290 Broadway, 19th Floor East
New York, NY 10007-1866

Re: Lower Passaic River Study Area (LPRSA) – 17-Mile RI/FS Project
Newark City, Essex
SRP PI# 332799
Activity Number Reference: RPC030001

Dear Ms. Salkie:

The New Jersey Department of Environmental Protection (Department) has completed a review of the 2nd Draft Baseline Ecological Risk Assessment (BERA) for the subject project, dated December 29, 2017 and the CPG's Response to Comments document (relative to USEPA comments dated June 30, 2017), which was submitted pursuant to CERCLA. The Department reviewed these documents in accordance with N.J.A.C. 7:26E-1.16, 3.6, and 4.8, the NJDEP *Ecological Evaluation Technical Guidance*, February 2015, and the USEPA *Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments*, EPA 540-R-97-006, June 1997. The Department's comments are provided in two parts: Part I, on the BERA and Part II, CPG's Response to Comments (RTC) document submitted with this version of the BERA. The Department's comments on the submittal are provided below.

The objective of the BERA is to identify key contaminants of ecological concern and to characterize and quantify ecological risks associated with contaminant-receptor pairs, resulting in overall assessed ecological risk to each receptor of interest in the study area. Through the Lower Passaic River (LPR) 8-Mile FFS, an ecological risk assessment was performed using careful selection of receptors, assessment and measurement endpoints, and the vetting of the most appropriate toxicity reference values for same. The key contaminants and receptors of concern are generally the same between the lower 8 miles and upper 9 miles of the tidal LPRSA (~ 17-miles in total). Although some differences exist between these two sections of the river (lower salinity in the farther upper portion of the river and increased sediment bed coarseness moving upstream) the primary risk drivers are the same and include chlorinated dioxins/furans and total PCBs. In addition, the LPRSA 17-Mile BERA is intended to more comprehensively address site ecological risks, whereas the LPR 8-Mile BERA focused on a smaller number of contaminants and receptors, deferring more complete assessments to the 17-Mile project.

Department Concerns

- For the LPRSA 17-Mile RI/FS BERA, the CPG has identified/selected *toxicity reference values which, in many cases, substantially differ from* the toxicity reference values already selected by the USEPA and Partner Agencies for key contaminants of concern and river receptors for the LPR 8-Mile FFS. The toxicity reference values for the LPR 8-Mile BERA, along with the BHHRA information, contributed to form the basis of 2016 LPR 8-Mile ROD.
- The LPRSA 17-Mile BERA presents *both sets of toxicity reference values (i.e., those used in the 2014 FFS and those newly selected by the CPG)*. Due to the large differences in assessed risk for key contaminants and receptors of concern, this, in effect, has resulted in presentation of 2 sets of contaminant-receptor risks (i.e., Hazard Quotients (HQs)) that are several orders of magnitude apart for several contaminant-receptor pairs. Although it has been suggested by the USEPA that these differences serve as bounding upper and lower risk estimates, the large differences render the “risk bounding” of limited value for application. Risk bounding should be done using a set of NOAEL/LOAEL from a single toxicity value, not using two sets of NOAEL/LOAEL values.
- In current form, the BERA stops short of definitively quantifying ecological risks through the standard Superfund process and best practices for same. Instead, the BERA concludes with a generated list of “Contaminants of Potential Ecological Concern” which are carried forward, in many cases, with two sets of opposing risk estimates, into the FS for evaluation of potential alternatives. This adds extra complexity and uncertainty to FS evaluations and, to the Department’s knowledge, is not typical within the application of CERCLA, and not performed for other State remediation projects.
- This action not only incumbers the remedial process for the LPRSA 17-Mile Project, but could be used to call into question key findings of the 2014 LPR 8-Mile BERA and associated ecologically-based Hazard Quotients. These HQs, particularly for DDT and Mercury, helped form the basis for the LPR 8-Mile ROD.

Part I - LPRSA Baseline Ecological Risk Assessment Comments

General Comment - Applicable to sections 6.3 Invertebrate Tissue Assessment, 7.1 Fish Tissue Assessment, 8.1 Bird Dietary Assessment, 8.2 Bird Egg Tissue Assessment, and 9.1 Mammal Dietary Assessment:

The Department had previously stated its disagreement with the use of dual sets of tissue and dietary toxicity reference values (TRVs) in comments on the “Passaic River Study Area, 17-mile Project, Baseline Ecological Risk Assessment, October 2016” (J. Nickerson to J. LaPoma, February 7, 2017). The Department is opposed to this approach and cannot accept the risk characterization results, i.e. hazard quotients (HQs), determined from more than one NOAEL/LOAEL contaminant-receptor pair. Specifically, the Department cannot accept the results in Tables 6-22, 7-8, 7-9, 8-12, 8-13, 8-14, 8-28, 8-29, 9-14, 9-15 other than those HQs that are based on one NOAEL/LOAEL set (e.g., the great blue heron dietary HQs for Cadmium in Table 8-13 are acceptable). The Department maintains that the use of dual TRV sets precludes achievement of the BERA’s objective (as per p. 34, Section 9 of the December 2017 RI/FS) “to identify unacceptable risks posed by site-related chemicals to ecological

species in the LPRSA.” This approach provides confusing results, is not consistent with guidance or norms of ecological risk assessment practice, and presents problems for the preliminary remediation goal (PRG) calculation process.

The risk characterization step should be the integrating and final product of the risk assessment, providing an unequivocal determination of presence or absence of elevated risk via one NOAEL-based HQ and one LOAEL-based HQ for each contaminant-receptor pair evaluated. HQs from more than one TRV set per contaminant-receptor pair provides confusing and uncertain results that are of limited use for remedial decision-making. Results are even more confusing where “alternate HQs” based on identified uncertainties are quantitated (i.e., section 8.1.4.2). Of most concern are the numerous instances where the CPG’s TRVs identified no/negligible risk ($HQ < 1$), whereas the 2014 FFS TRVs indicate high risk (in the first scenario, a PRG would not be developed, in the second, a PRG is necessary). Prominent examples are the PCDD/PCDF results in Table 6-22, “Invertebrate tissue LOAEL and NOAEL HQs.” Both results cannot be correct and there is no indication how this issue will be managed in the Feasibility Study (FS).

The Department suggests that the most conservative of verified studies in EPA’s June 8, 2017 spreadsheet be used to select one NOAEL-LOAEL TRV set to reflect risk to the more sensitive ecological receptors dependent on the Passaic River. The Department notes that examples of risk characterization in ERAGs (USEPA, 1997), such as Example 4-3 and the Appendix A examples, all use just one NOAEL-LOAEL pair to determine the risk range. Moreover, the Department spot-checked TRVs used in BERAs from three largely dioxin-driven Superfund sites from different EPA regions: Centredale Manor, 2003 (Rhode Island); Allied Paper, 2003 (Michigan); and San Jacinto River Waste Pits, 2013 (Washington State). In no case was more than one NOAEL/LOAEL set used for risk characterization. Additionally, NJDEP’s Ecological Evaluation Technical Guidance, February 2015, does not advocate the use of more than one set of TRVs for the thousands of LSRP-lead sites in New Jersey with potential ecological impact. Our Component Review process indicates that LSRP-lead sites and direct oversight cases have only used one set of TRVs in ecological risk assessments, and we believe that risk characterization for all New Jersey sites, including Federal-lead sites, should use a consistent approach to risk characterization. The Department also suggests that, for consistency and comparability of the risk evaluation between the lower 8 and upper 9 miles of the river, the TRVs (denominator in the HQ calculation) should be held constant for the key contaminants common to both reaches; the FFS-based TRVs should be used, such that differences in risk can be attributed to difference in sediment and tissue concentrations (i.e., location-specific exposures variables in numerator of the HQ equation).

Since it is appropriate to develop only one PRG for each contaminant-receptor pair where NOAEL/LOAEL-based HQs exceed one, the use of dual sets of TRV leads to confusion as to which of the various HQs should become the basis of the PRGs, and merely postpones the designation of the single appropriate NOAEL-LOAEL TRV set until a later project phase. During the Partner Agency conference call on July 20, 2017, USEPA verbally indicated the TRV sets which result in the highest HQs would be preferentially used for PRG determinations, however this position is not reflected in the BERA. The PRG calculation process, such as two-step process used in the FFS Appendix E (USEPA, 2014) or the Rule of Five Approach (USEPA, 2007), should only go forward with one set of TRVs, which should be determined in the BERA. Until this BERA is revised using one set of appropriately conservative TRVs, it is the Department’s position that the overall sediment PRGs based on ecological

protection in the FFS, Appendix E, Table 2-7 (USEPA, 2014) should be used as default values for Mercury, PCBs, tDDX, and 2,3,7,8-TCDD/TCDD TEQ for the full 17 miles of the LPRSA.

Section 6 - Baseline Invertebrate Assessment:

Table 6-25 Invertebrate tissue LOAEL and NOAEL EFs for regulated metals: None of the NOAELs that exceed one are highlighted. In accordance with USEPA (1997), these NOAEL EFs should be highlighted and used in the risk assessment.

6.3.6 Summary:

Table 6-26 Summary of invertebrate tissue LOAEL HQs: None of the LOAELs that exceed one are highlighted and NOAELs are not reported. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

Table 6-27 Summary of invertebrate tissue LOAEL EFs for regulated metals: None of the LOAELs that exceed one are highlighted and NOAELs are not reported. In accordance with USEPA (1997), the LOAEL and NOAEL EF exceedances should be highlighted and used in the risk assessment.

6.4 Identification of Preliminary COCs, and Risk Conclusions: The text states that “COPECs and receptor pairs with HQs ≥ 1.0 (based on a range of LOAEL TRVs or the TRV representing the 5th percentile of the SSD) in at least one LOE were proposed as preliminary COCs;” however, the COPECs should be based on both NOAELs and LOAELs and the correct TRVs, in accordance with USEPA (1997).

Table 6-28 Identification of preliminary COCs for benthic invertebrates: None of the LOAELs that exceed one are highlighted and NOAELs are not reported. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

Table 6-29 Identification of preliminary metals COCs for benthic invertebrates: The LOAEL that exceeds one is not highlighted and NOAELs are not reported. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

Section 7 Fish Assessment

7.1.3 Effects: The text states that “a range of TRVs was evaluated;” however, the TRVs from the FFS or, if not available, the lowest literature value should be used.

7.1.3.1 Methods for selecting TRVs: The text states that “TRVs were selected based on an SSD derived using all acceptable LOAEL TRVs;” however, the TRVs from the FFS or, if not available, the lowest literature value should be used and the NOAEL TRVs should be used in accordance with USEPA (1997).

7.1.3.2 Selected TRVs for fish tissue: The text states that for selenium, “no additional (NOAEL) TRV was selected;” however, in accordance with USEPA (1997) a NOAEL is required to be used. NOAELs are required for all COIs.

7.1.4.1 Tissue HQs: NOAELs are required for all COIs and receptors.

Table 7-8 Focal fish species tissue LOAEL HQs and Table 7-9 Focal fish species tissue NOAEL HQs: The LOAELs and NOAELs that exceed one are not highlighted. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

Table 7-10 Additional fish species (non-focal) tissue LOAEL HQs and Table 7-11 Additional fish species (non-focal) tissue NOAEL HQs: The LOAELs and NOAELs that exceed one are not highlighted. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

7.1.4.3 Uncertainties in risk characterization:

Table 7-12 Fish tissue LOAEL HQs based on uncertainties in exposure assumptions and EPCs: The LOAELs that exceed one are not highlighted and NOAELs are not reported. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

7.1.4.2 Tissue EFs for regulated metals:

Table 7-13 Focal fish species tissue LOAEL and NOAEL EFs for regulated metals and Table 7-14 Additional fish species (non-focal) tissue LOAEL and NOAEL EFs for regulated metals: The NOAELs that exceed one are not highlighted. In accordance with USEPA (1997), the LOAEL and NOAEL EF exceedances should be highlighted and used in the risk assessment.

7.1.6 Summary: The text states that “There is a large amount of uncertainty associated with these risk results because of the small sample size.” This statement should be removed from the summary and placed into the uncertainty section.

The text also states that “There is high uncertainty associated with the risk estimates for inorganic metals due to the varying ways fish uptake, bioaccumulate, and regulate metals within tissues.” This statement should be removed from the summary and placed into the uncertainty section.

7.2.2.2 Body weights, ingestion rates, and site use factor: the Department questions the 5% sediment ingestion rate used for the American eel in **Table 7-19** and would like to discuss this with USEPA and partner agencies.

Table 7-20 Prey composition used to estimate dietary dose for focal fish species: The channel catfish and largemouth bass exposure areas are listed as >RM 4 whereas they were listed as only being caught above RM 8 and RM 6, respectively. In addition, the prey for the largemouth bass is listed as >RM4, although they were only found above RM6. Clarification is needed for these discrepancies.

7.2.3.1 Methods for selecting TRVs: The text states that “In the revised draft BERA, LOAEL TRVs were used in the discussion of risk characterization; literature-based NOAELs were included for

informational purposes.” Both LOAELs and NOAELs must be included in the risk characterization in accordance with USEPA (1997).

The text also states that “TRVs were based on a review of the literature. The lowest acceptable LOAEL was selected.” Both LOAELs and NOAELs must be included in the risk characterization in accordance with USEPA (1997).

7.2.4.1 Dietary HQs: The text states that “No chromium LOAEL HQs were calculated because no LOAEL TRV was available.” An acceptable NOAEL was identified and the NOAEL TRV should be presented. Both LOAELs and NOAELs must be included in the risk characterization in accordance with USEPA (1997).

Table 7-25 Fish dietary HQs: The NOAELs that exceed one are not highlighted. In accordance with USEPA (1997), the LOAEL and NOAEL HQ exceedances should be highlighted and used in the risk assessment.

7.2.6 Summary: The text only discusses LOAEL HQs. Both LOAELs and NOAELs must be included in the risk characterization in accordance with USEPA (1997).

Table 7-28 Surface water TRVs used in the evaluation of fish: Acute is reported to have been used for several TRVs. Chronic studies are preferred over sub-chronic studies, which are preferred over acute studies in accordance with USEPA (1997).

Section 8 Bird Assessment

General comment – 8 Bird Assessment: In introductory text (p. 493) and elsewhere in this section, for contaminants where $HQs \geq 1$, the term “preliminary” COCs is used. The final product of the BERA should be an unequivocal determination of presence or absence of elevated risk for appropriate contaminant - receptor pairs, therefore the term “preliminary” is not appropriate, especially in the concluding summary. Based on text in 8.3 *Summary of Preliminary COCs for Birds*, the Department interprets the term “preliminary” to mean that because HQs were developed from for organism-level effects, they are deemed preliminary and will be finalized later in the FS when population-level effects are considered. The Department does not agree with this concept. Assessment endpoints generally state “reduction of ecological populations,” and while corresponding measurement endpoint by necessity provide results on toxicity to individual organisms, population-level impacts are inferred from these data (NJDEP, 2015, section 6.1.1.1). Please remove the word “preliminary” for COC where the $HQ \geq 1$.

8.1.4 Risk Characterization (p.529): The Department acknowledges Appendix G contains detailed reach-specific HQ results. However, because some of the most salient findings of the BERA relate to differences in HQs among various reaches/exposure zones, (stemming from differences in sediment and tissue concentrations), more detailed reach- specific discussions regarding NOAEL- and LOAEL- based HQ exceedances should be incorporated. For example, text (p. 534) states that, for the spotted sandpiper, the highest HQ for total TEQ is in Reach 4. This is accurate, but Reach 6 results are also highly elevated and should be discussed. The Department also notes that, while Tables 8-12, 8-13, 8-14, and Appendix G tables present both NOAEL- and LOAEL- based HQ, there is no discussion of NOAEL-based exceedances in this section; this section should be revised to discuss NOAEL-based exceedances.

Appendix J. Derivation of Background concentrations

3 Background Concentrations: The text states “Background values were determined for only COPEC-ecological receptor pairs with effects-based HQs ≥ 1.0 , as calculated in the BERA.” Only LOAEL HQs were used in the BERA. In accordance with USEPA (1997), NOAEL and LOAEL must be used in the risk assessment.

Appendix P: Sediment Quality Triad Lines of Evidence for the BERA of LPRSA Benthic Invertebrates

General Comment - Although a separate document from the BERA in which these comments are in response to, it is important to point out that Section 5 of the Draft Remedial Investigation (RI) Report for the LPRSA (December 2017) specifically states in Figure 5-11 that the biologically active zone is only the first 0-2 cm of sediment. Section 5 also suggests this concept within the text on pages 5-7. These statements conflict with *Appendix P: Sediment Quality Triad (SQT) Lines of Evidence for the BERA of LPRSA Benthic Invertebrates*, which details the methodology and analysis of SQT samples, all of which were collected down to a depth of 15 cm. In addition, a Dispute Resolution Letter, from Walter Mugdan, Director of the Emergency and Remedial Response Division of USEPA Region 2, to Robert Law on June 28 2016 clearly states “using the existing RI data from the top 15 cm of sediment to represent contaminant concentrations applicable to the biological exposure depth, and for this information to be used in the bioaccumulation modeling in accordance with EPA directions previously provided, and as explained in detail to the CPG during the course of the dispute”. The statements and tone on pages 5-7 and in Figure 5-11 of Section 5 of the RI Report need to be revised to reflect the fact that the biologically active zone in sediment exists to a depth of 15 cm, not 2 cm.

2.3.1 Reference Data: According to this section, Mullica River freshwater data, which includes the freshwater stations NJ00-0041, NJ01-0120, and NJ02-0232 identified in the June 3, 2016 Battelle memo, was not used to characterize risk because the only toxicity test used on sediments in that area tested *A. abdita*, and these tests were not directly comparable to freshwater LPRSA tests with *H. azteca* or *C. dilutus*. The Department considers non-urban reference stations as true reference and without the use of these stations to characterize risk, the benthic community impacts in freshwater portions of the river is unable to be appropriately evaluated. If the above freshwater reference stations are considered insufficient to characterize risk, there are other available stations to choose from. Previously, NOAA submitted comments (R. Mehran to S. Vaughn, April 16, 2015), which describe availability of sediment chemistry and sediment toxicity data for *H. azteca* for three freshwater locations that could also be used to characterize risk. Have these locations been considered?

3.1 Methods: The Department’s comments on the *A. abdita* survival testing were absent from the *RTC to USEPA Comments Dated June 30, 2017 (12/29/2017)* document provided by Windward Environmental, LLC, and therefore were not addressed in the revised BERA. Did USEPA forward the Department’s original comment along or was it omitted because of USEPA approval for the method alterations, as suggested in the USEPA document entitled *Conference Call, January 13, 2016, “Item 3 of the Bulleted Items”*? The Department does not concur with the way in which *A. abdita* survival test

data, acquired using altered test methods, was quantitatively used in the BERA. CPG has retained the results despite alterations made to ASTM protocol for a static test, stating that “gently adding overlying water does not constitute a positive bias because sediment toxicity is not altered, rather, the stressful conditions that are created as a result of the toxicity test itself are ameliorated”. In addition, they go on to say that “static renewal can influence results if VOCs are present in sediment since small perturbations of overlying test chamber waters can increase volatilization and thereby decrease chemical exposures. However, in the LPRSA, key chemicals of interest have low or no volatility under standard conditions so the influence of renewal is negligible”. It is the Department’s position that these data are not comparable to data run according to standard USEPA and ASTM protocols, including data from other New Jersey sites and from the Jamaica Bay and Mullica River/Great Bay reference locations herein.

Part II - RTC Document

45: The response is acceptable.

65: The response states that “NOAELs have been added for those chemical/receptor pairs that previously had only LOAEL SSDs by selecting the highest NOAEL below the LOAEL SSD;” however, the text in the BERA has not changed. The text in the BERA should reflect that the NOAEL represents the lower bound of the risk range and the LOAEL represents the upper bound of the risk range.

The response also states that “CPG does not recommend incorporating NOAELs into the SSD with LOAELs, or incorporating FFS TRVs into the CPG LOAEL TRV SSD curve if the study did not pass the CPG TRV acceptability criteria.” The NOAELs and LOAELs should not be incorporated for SSD determination. The FFS TRVs should be used in lieu of the SSD TRVs.

66: The response is acceptable.

67: The response referenced a “conference call between CPG and USEPA on 9/27/17;” however, NJDEP was not a party to that conference call and does not concur that Figure 6-28 is acceptable.

68: The response states that “the CPG-recommended dieldrin invertebrate tissue TRVs have been revised and are now based on data from Parrish et al. (1973), which is the same study the NOAEL and LOAEL TRVs were derived from in the FFS.” This is correct; however, the NOAEL and LOAEL used by the CPG are an order of magnitude higher than those used in the FFS. As per the 2014 FFS, Appendix D, Attachment 6, Table 6-1, a 10-fold acute-chronic adjustment factor was applied because the pink shrimp exposure time was only 96 hours. Therefore, the values used in the FFS should be used in lieu of the CPG TRVs.

69: The response is acceptable.

70: The response is acceptable.

71: The response is acceptable.

72: The response is acceptable.

73: This was an EPA comment; however, the response states that “for TEQ, it was agreed that two distributions would be presented because of the uncertainties.” NJDEP was not a party to this agreement and does not concur.

74: The response states that “the text has been revised to accurately state the range of LOAELs reported in the literature.” The low value of 1,670 still does not appear to correlate with the values on the figure.

75: The response is acceptable.

76: The response is acceptable.

77: The response is acceptable.

78: The response is acceptable.

80: The response is acceptable.

82: The response is acceptable.

89: The response states that Equation 8-2 was corrected to express EPC_{prey} on a wet weight basis, however, it remains expressed as “dw” (dry weight) in the definition of “EPC_{1,2}” (p. 496). This should be corrected.

90: The response is acceptable.

119: The response is acceptable.

130: The response misinterprets USEPA 1997. Physical stressors should not be considered in the risk assessment, only impacts from hazardous substances should be considered.

131: The response is acceptable.

References:

NJDEP. 2015. *Ecological Evaluation Technical Guidance*, February 2015.
http://www.nj.gov/dep/srp/guidance/srra/ecological_evaluation.pdf

USEPA. 1997. *Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments*, EPA 540-R-97-006, OSWER 9285.7-25, PB97-963211, June, 1997. <https://semspub.epa.gov/work/HQ/157941.pdf>

USEPA. 1997a. *Interim Final, Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments*. Office of Solid Waste and Emergency Response. EPA 540/R-97/006. Office of Solid Waste and Emergency Response, Washington DC.
<http://www.epa.gov/oswer/riskassessment/ecorisk/ecorisk.htm>

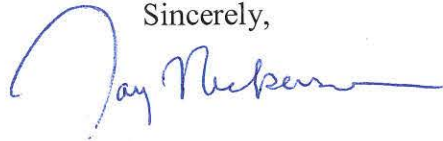
USEPA. 2007. *The Rule of Five: Novel Approach to Derive PRGs*. Presented by M.S. Greenberg at the National Defense Industrial Association (NDIA) Joint Services Environmental Management Conference & Exhibition (JSEM, Columbus, Ohio, May 22, 2007. http://proceedings.ndia.org/jsem2007/4039_Greenberg.pdf

USEPA. 2014. *Lower Eight Miles of the Lower Passaic River, Focused Feasibility Study Report* available at <http://passaic.sharepointspace.com/Public%20Documents/2014-03-10%20LPR%20Focused%20Feasibility%20Study%20Report.pdf>

Please incorporate these comments into the letter that the USEPA will be sending to the Cooperating Parties Group.

Thank you for your cooperation in this matter. If you have any questions, call Jay Nickerson at (609)633-1448, or email at Jay.Nickerson@dep.nj.gov.

Sincerely,



Jay Nickerson
Bureau of Case Management
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cc.

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